

**AUTHORITY FOR ADVANCE RULINGS**  
**(Central Excise, Customs and Service Tax)**  
**Hotel Samrat, 4<sup>th</sup> Floor, Kautilya Marg, Chanakyapuri**  
**New Delhi**

**Present:**

**Justice V.S. Sirpurkar (Chairman)**  
**Shri S.S.Rana (Member)**  
**Shri R.S.Shukla (Member)**

The 15<sup>th</sup> day of July, 2016

Ruling No. AAR/ST/20/2016

**Application No. AAR/44/ST/12/2014**

Name & address of the applicant : M/s. H&M Hennes & Mauritz  
Retail Private Limited, New Delhi.

Commissioner concerned : Commissioner of Service Tax,  
17-B, I.A.E.A. House, M. G. Marg,  
IP Estate, New Delhi-110002.

Present for the applicant : Shri Tarun Gulati, Advocate

Present for the Department : Shri Amresh Jain,  
Authorised Representative (AR)

**RULING**

M/s H & M Hennes & Mauritz Retail Pvt. Ltd (hereinafter also referred to as applicant) is an Indian wholly owned subsidiary comprising of M/s H&M Hennes & Mauritz GBC AB, Sweden ("H&M GBC") holding 99% of equity shares of the applicant and M/s H&M Hennes & Mauritz International AB, Sweden ("H&M AB") holding the remaining 1% shares of the applicant. Applicant is in the process of setting up its business of single brand retail trading of various products viz. Clothes and Apparel, Footwear, Cosmetics and Accessories, Handbags, Home furnishing products, Children Products, Outdoor utility products etc. under the brand 'H&M'. H&M AB, resident in Stockholm, Sweden, is the parent company of the H&M group of related entities. H&M

AB currently operates as the centralized administrative entity of the global H&M operation and is the owner of all H&M intellectual property related to the H&M brand and trademarks. H&M AB's main responsibilities include the development of the overall strategic direction of the H&M Group and the maintenance and ownership of the H&M brand and trademarks. H&M AB has granted global exclusive rights to H&M GBC to exploit "H&M concept" and associated trademarks, and to implement the marketing and brand strategies as defined by H&M AB throughout the globe. H&M GBC, resident in Sweden, is the operational head office company of the H&M Group. H&M GBC is responsible for all operational activities within H&M Group's supply chain, including design, buying (material sourcing), production, logistics, strategy for pricing policy, advertising and marketing, shop location policy, store design, management, finance, strategy, and sales. H&M GBC holds all intellectual property, e.g., operational know-how, associated with these activities.

2. Applicant proposes to procure and import into India, said goods from independent overseas third party manufacturers at an agreed price. The said goods will be procured by the applicant on a principal to principal basis (from the third party manufacturers) and the goods will be imported into India in the name of the applicant only for which purchase orders will be placed on the third party manufacturers. Further, the invoice raised by the third party manufacturers on the applicant will form the basis of the value of the said goods for the purpose of Customs Valuation.

3. Pursuance to import of the said goods, applicant proposes to market and sell the said goods in India on the basis of commercial arrangements with H&M GBC. In this regard, for the sale of goods in India and using the H&M concept and brand, the applicant has entered into three separate Agreements with H&M GBC, which are explained hereunder:-

- a. **Foreign Collaboration and Sub-License Agreement:** Applicant has entered into a Foreign Collaboration and Sub-License Agreement with H&M GBC dated 01.04.2014 for obtaining rights to exploit 'H&M' brand for sale of goods in India. The consideration for this agreement will form part of the Trademark License Agreement and a consolidated consideration will be paid by the applicant to H&M GBC for both the Agreements.
- b. **Trademark License Agreement:** Applicant has entered into a Trademark License Agreement with H&M GBC which is effective from 01.04.2014 for the use of the trademark rights with respect to the 'H&M Concept' for distribution and retailing of the said goods in India. The Agreement allows the applicant to use

the H&M trademark and its graphic presentations in India. Further, the license fee under this Agreement will be calculated and paid to H&M GBC as 1% of the total sales made by the applicant.

- c. **Sales and Business Support Agreement:** In lieu of the functions performed by H&M GBC towards overall market strategy, store location, store designing and concept, sales as well as for the entrepreneurial risk assumed, the applicant will pay a Sales and Business Support fee to H&M GBC in terms of the Sales and Business Support Agreement.

4. As regards the said goods proposed to be imported by the applicant, the applicant would place a purchase order for the said goods on the overseas third party manufacturers. On the basis the purchase order, the required goods will be exported by the overseas third party manufacturers directly to the applicant. The said goods will be cleared in India by the applicant. For said goods, the overseas third party manufacturers will issue separate invoices directly to the applicant on the basis of which, the said goods will be cleared in India. The price shown on the invoices of the third party manufacturers will be the sole consideration paid for the said goods and apart from the payment in terms of the said invoices, no other payment will be made by the applicant or by anybody else on behalf of the applicant to the said third party manufacturers for the said goods.

5. Applicant has raised following questions for rulings by this Authority in terms of Finance Act, 1994;

*A. Whether the Trade Mark/ License Fee and the payment made in terms of the foreign collaboration agreement by the applicant to H&M GBC is liable to Service Tax in terms of the Finance Act, 1994?*

*B. Whether the sales and Business Support Fee paid by the applicant to H&M GBC is liable to Service Tax in terms of the Finance Act, 1994?*

6. The applicant has entered into **Trademark License Agreement** with M/S H & M Hennes & Muritz GBC AB to use the trademark rights and other intangible property in the buying and sales of fashion garments and related products and related activities in the Indian Territory. The applicant is required to pay the License Fee subject to its earning at arm's length target margin for using of Trademark. All intellectual property

(IP) rights and other rights, including, without limitation-patents, design rights, trademarks, copyright and know-how, relating to the IP shall all times be the exclusive property of H & M GBC. Service as per Section 65B (44) of the Finance Act, 1994 inter-alia means any activity carried out by any person for another for consideration, and includes a declared service. In terms of Section 66E (c) of the Finance Act, 1994, *"temporary transfer or permitting the use of enjoyment of any intellectual property right"* is a declared service. Section 68 (1) ibid inter-alia enshrines that every person providing taxable service to any person shall pay service tax. However, Section 68(2) provides that in respect of such taxable service as may be notified by the Central Government in the Official Gazette, the service tax thereon shall be paid by such person and in such manner as may be prescribed at the rate specified in section 66. Further, in terms of Section 68(2) of the Finance Act, 1994 read with Notification No. 30/2012-ST dated 20.06.2012, any taxable services provided or agreed to be provided by any person who is located in a non-taxable territory and received by any person located in the taxable territory, service tax is payable by the person receiving the service. The applicant has entered into Trademark License Agreement with M/s H & M Hennes & Muritz GBC AB, Sweden to use the trademark rights and other intangible property rights and required to pay the License Fee. All intellectual property rights and other rights, including without limitation patents, design rights, trademarks, copyright and know-how, relating to the IP shall all times be the exclusive property of H&M GBC, Sweden. Accordingly services received by the applicant fall under the declared services and would attract the levy of Service Tax under reverse charge mechanism.

7. The applicant also propose to receive various business support services i.e. Business Planning, strategies, operational & administrative support etc. and make a variable annual payment to H&M GBC, Sweden. In this case also, **Sales and Business Support Agreement** will be covered in the definition of "service" under Section 65B (44) of the Finance Act, 1994. Section 68 (2) provides that in respect of such taxable service as may be notified by the Central Government in the Official Gazette, the service tax thereon shall be paid by such person and in such manner as may be prescribed. Therefore, in terms of above Section 68(2) read with Notification No.30/2012-St dated 20.06.2012, taxable services provided or agreed to be provided by any person who is located in a non-taxable territory and received by any person located in the taxable territory, service tax is payable by the person receiving the service. Therefore, in this case also, the service is proposed to be provided by H&M GBC, Sweden. Further, as per the provisions of Section 66D, Services received by the applicant does not fall under the "negative list of services" and would attract the levy of Service Tax under reverse charge mechanism.

8. It is noticed that there is no divergence in the views of the applicant and the Revenue as far as questions raised in this application are concerned. We have examined the issue and agree with the views expressed by the applicant and the Revenue. Therefore, we rule as under;

*A. The Trade Mark/ License Fee and the payment made in terms of the foreign collaboration agreement by the applicant to H&M GBC are liable to Service Tax in terms of the Finance Act, 1994.*

*B. The Sales and Business Support Fee paid by the applicant to H&M GBC is liable to Service Tax in terms of the Finance Act, 1994.*

**Sd/-**

**(S.S. Rana)  
Member(R)**

**Sd/-**

**(V.S. Sirpurkar)  
Chairman**

**Sd/-**

**(R.S.Shukla)  
Member(L)**